Examiners' Report
Lead Examiner Feedback

January 2022

Pearson BTEC Nationals
In Applied Law (20170K)
Unit 3: Applying the Law

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Grade Boundaries

What is a grade boundary?

A grade boundary is where we set the level of achievement required to obtain a certain grade for the externally assessed unit. We set grade boundaries for each grade, at Distinction, Merit and Pass.

Setting grade boundaries

When we set grade boundaries, we look at the performance of every learner who took the external assessment. When we can see the full picture of performance, our experts are then able to decide where best to place the grade boundaries – this means that they decide what the lowest possible mark is for a particular grade.

When our experts set the grade boundaries, they make sure that learners receive grades which reflect their ability. Awarding grade boundaries is conducted to ensure learners achieve the grade they deserve to achieve, irrespective of variation in the external assessment.

Variations in external assessments

Each external assessment we set asks different questions and may assess different parts of the unit content outlined in the specification. It would be unfair to learners if we set the same grade boundaries for each assessment, because then it would not take accessibility into account.

Grade boundaries for this, and all other papers, are on the website via this link:
http://qualifications.pearson.com/en/support/support-topics/results- certification/grade-boundaries.html

Awarding BTEC qualifications in 2022

Ofqual has set out their plans for awarding qualifications in 2022 and intend to return to a normal, pre-pandemic, approach to grading standards over by 2023. They have confirmed that 2022 will be a transition year, to reflect that we are in a pandemic recovery period and students' education has been disrupted.

Our guiding principle and approach to awarding BTEC qualification results in 2022 will be to ensure parity in relation to the approach being taken for GCSE and A level learners. BTEC courses have a different structure and design to academic qualifications - BTECs are modular qualifications (with assessments taking place throughout the course) compared to GCSEs and A levels which are linear (assessed and awarded at the same time at the end of the year), and therefore our approach needs to be different.

In 2022 we will return to the usual method of calculating BTEC qualification results, however adaptations including, U-TAGs and reduced internal assessment, are in place to provide a comprehensive package of support for students.

The basis of our awarding approach to BTECs this year is to ensure it is as fair as possible for all learners. We will use a range of evidence to set grade boundaries for the external units. Part of this evidence will be to closely monitor learner performance in all assessments that contribute to learners' final qualification grade, to ensure parity with A level and GCSEs.

Further information can be found on our website and via our Social Media channels.

Unit Code: Unit title

Grade	Unclassified	Level 3			
		N	P	M	D
Boundary Mark	0	14	27	40	53

Introduction

The 2201 series was the first external assessment of a full cohort since January 2020. This was following the cancellation of both the 2006 and 2106 series and the late decision in the 2101 series to allow centres to decide for themselves whether to permit learners to sit the assessment. Due to the ongoing pandemic, the decision was made to release Part A slightly earlier to mitigate any consequences of learners or teachers who had to self-isolate during the delivery of content. As anticipated, the 2201 series witnessed the largest number of learners sitting the assessment since the introduction of the Extended Certificate in Applied Law. Evidently there were more learners than the previous January session for the reasons identified above, however, the main reason for the increase is due to the phasing out of the QCF Subsidiary Diploma, with many centres transferring to the new specification. As such, there will have been many centres who were less familiar with the format and assessment of the paper. Student performance was, however, very consistent with previous sessions, with many learners providing detailed and well thought out responses which demonstrate a good understanding of the legal issues presented in the Set Task Information. There was evidence of many learners achieving the higher marks and accessing the full range of the mark scheme.

Unit 3 (20170K) forms one of the two mandatory externally assessed unit on the Extended Certificate in Applied Law and is assessed twice yearly in January and May. This was the sixth external assessment and third January series of Unit 20170K Applying the Law. The assessment continues to be based on the now well-established format of two key events; the Part A pre-release followed approximately two weeks later by the Part B assessment itself, which is a 2-hour session of two tasks, each worth 36 marks. The Part B assessment is taken under the supervised and controlled conditions on a date timetabled by Pearson (please refer to the Administrative Support Guide for Unit 3 for further information). It should be noted, the learners are encouraged to split their time equally across the two tasks.

As has been identified in all previous Lead Examiners Reports, the Part A pre-release is intended to act as a catalyst for further research for learners. It consists of two new reports, one on homicide, and the other on offences against property. The Part A pre-release will indicate which offences learners will be required to explain and apply to the additional

information provided in Part B. In Part B, learners are provided with additional material for the relevant homicide and property offences, as well as information on police powers and general defences. In this series, the focus of Activity 1 was murder and loss of control, accompanied by the police power of stop and search, and Activity 2 was criminal damage with the defence of duress by threats.

This unit is synoptic to the Extended Certificate in Applied Law, meaning that learners are required to draw on skills, knowledge and understanding acquired from the three other units they have studied within the specification when completing both of the set tasks. For example, in unit 1 learners have studied the concept of precedent and will therefore understand that the caselaw they are referring to when determining the criminal liability of the defendants in both activities are examples of precedents set by the higher courts that lower courts are bound to follow in future, similar cases. In addition to this, the fact that learners are required to apply their learning to realistic contexts in all units is a skill that they are able to draw on when completing the tasks for this unit.

The assessment of both tasks in the unit is based around five assessment foci which are distributed across the 36 marks as follows:

- **AF1**: Selection and understanding of legal principles relevant to context (8 marks)
- **AF2**: Application of legal principles and research to information provided (8 marks)
- **AF3**: Analysis of legal authorities, principles and concepts (8 marks)
- **AF4**: Evaluation and justification of decisions (8 marks)
- **AF5**: Presentation and structure (4 marks)

During the Part B controlled assessment, learners are required to produce their work using a computer. The two tasks, along with a candidate declaration of authenticity are then submitted along with a learner record and centre record which is found within the Administrative Support Guide. There were a number of centres who submitted work without including signed authentication sheets and/or learner record sheets. There were also a number who submitted incorrect learner record sheets, which listed the incorrect assessment *foci*. It is strongly advised that centres locate the most up-to-date copies of all of the documents. These can be found on the course materials section of the BTEC Nationals Applied Law (2017) page, under the external assessments tab and then General Support.

The Administrative Support Guide also contains all of the relevant information and guidance to ensure that all administrative requirements are met:

https://qualifications.pearson.com/en/qualifications/btec-nationals/appliedlaw-2017.coursematerials.html#%2FfilterQuery=category:PearsonUK:Category%2FExternal-assessments

Introduction to the Overall Performance of the Unit

As indicated within the introduction, the overall performance of this session was consistent with the five previous sessions. Part A was released slightly earlier than two weeks before Part B to allow for any adverse consequences individual centres may have had as a result of the pandemic. It is of no doubt that nationally there will have been learners who will have experienced periods of isolation, this appears to have had little to no adverse impact on performance, with a similar portion of learners achieving pass and distinction grades as other comparable series. Another echo from previous sessions is that there is no discernible difference in performance between the two activities.
Learners appear to have been using the Part A pre-release effectively and as intended, correctly identifying (on the whole) murder with loss of control and criminal damage as the relevant offences. Once again, however, police powers within Activity 1 performed slightly better as it would appear that many centres are still attempting to predict the general defence and therefore did not expect duress.

The considerable increase in the cohort did, however, mean the return to issues indicated in previous examiners reports.

Most notable issues the arose were:

- Including all of the relevant homicide or property offences, before focusing the application on most appropriate area identified within the Part B additional information. Or, alternatively, referred to all possible police powers or general defences, without applying the most relevant.
- Reference to police powers and general defences in both activities, where it would not be credited.
- Restating the facts of the scenario without teasing out the most important points and linking these to a relevant point of law.

Areas of good practice

There was evidence of many well-prepared centres, in which it was evident that their learners had acquired a detailed knowledge and understanding of the four key areas required discussion in Part B. The following were common traits among many learners:

- Detailed explanation of the law, relating to both loss of control and criminal damage.
- There was clear evidence of selection of appropriate and relevant legal principles, which demonstrate an effective use of preparatory notes, with the impact that many did not refer to irrelevant information, in the form of additional homicide or property offences.
- Reference to a range of legal authority, in the form of both statute and common law.
- Well-structured and well thought out responses
- Justified conclusions that brought together all elements of their discussion to determine the liability of both defendants.

On the whole the standard produced by many of the learners was very good and quite comprehensive. There was no distinction in the quality of the work produced in both activities. It was also good to see that there remained no timing issues, despite newer centres coming on board, which demonstrates how well prepared the candidates were.

Areas requiring improvement

The practices requiring improvement have been well documented in previous Lead Examiners reports, however, for future series, these must be restated as they have returned. In order to address future learner performance and outcomes, centres should be:

- Encouraging learners only to discuss the relevant law they have researched as part of the Part A pre-release, as opposed to stating all homicide and property offences. Learners should be more fully prepared throughout the course to be more selective in the pre-release research. There are several past exam papers and Additional Sample Assessment Materials which can be used to prepare learners for identifying the key issues when they are presented with Part A for their independent research. Familiarising learners with the construction of the Part A and improving their ability to identify the relevant area of homicide and property offences will mean that the notes produced will not include irrelevant information which they could be tempted to utilize in their Part B Set Task.

- Discouraging learners from simply restating the facts of the Set Task Information, either as an introduction or in lieu of fully applying the law. Reproducing the facts of the scenario as an introduction wastes time and is not creditworthy. Learners need only present a brief introduction identifying the relevant offence and police power/defence. Similarly, restating the facts of the scenario would not be creditworthy as application without a clear link to the legal issue at hand.
- Whilst previous examiners reports did emphasise that where voluntary manslaughter is the focus of the scenario, a full and comprehensive treatment of murder was not required, however, many centres took this a little too literally and neglected murder all together. Murder is still an aspect of voluntary manslaughter and must be referred to, given that voluntary manslaughter is a partial defence and so a murder must be established before voluntary manslaughter can be pleaded.
- Discouraging learners from including both police powers and general defences in both activities. Learners should only include these within one activity, based on the facts of the Set Task Information.

Individual Questions

As stated in the introduction, both activities are divided between the 5 assessment *foci*.

- **AF1** (knowledge and understanding) assesses the ability of learners to identify the correct homicide or property offence and explain its component parts
- **AF2** (application) is awarded for the application of the relevant legal rules relating to homicide or property offences to the facts if the scenario.
- **AF3** (analysis) is the ability of learners to respond to the additional information relating to police powers and general defences
- **AF4** (evaluation and justification of decisions) is awarded on the basis for learners to conclude on liability and, where necessary, provide evaluative commentary
- **AF5:** (presentation and structure) is awarded for the completeness of the task

Activity 1 (Homicide and Police Powers)

Homicide (AF1, AF2, AF4)

For Activity 1, the learners are told in the Part A pre-release that the defendant (Kevin) "suddenly lost his temper" and "beat his brother to death". The reference to losing temper and beating to death is a clear indication that the relevant homicide would be murder with the partial defence of loss of control. The facts within Part B expanded on this information and raised the following issues:

- Kevin has ran to the table, picked up a hammer and shouted "die", with the victim dying instantly at the scene. This is a clear cut murder. There are no issues of causation as no potential intervening acts were present; Kevin hits Daniel with the hammer repeatedly and Daniel dies. In relation to the *mens rea*, there was no issue that there was an intention to kill, given that Kevin was shouting die as he hit him. As such,death was clearly his aim, objective and purpose.
- For the first element of loss of control, it is clear that Kevin lost his control and suddenly (although there is no longer the requirement that the loss of control be sudden). After the comments are made towards his sister, Renee, Kevin immediately runs to the table and picks up the hammer. The repeated beating is evidence of the loss of control in accordance with the ruling in ***R v Jewell*** that a loss of control was "the loss of ability to act in accordance with the considered judgment or the normal powers of reasoning". Had Kevin acted with rational judgment and normal powers of reasoning, it is clear that he would not have reacted in this manner.
- In relation to the qualifying triggers outlined in s55 Coroners and Justice Act 2009, there were two potential routes. The first was fear of serious violence under s55 (3), given that Daniel had previously been violent towards Kevin's sister and had, on the night in question, stated that he would give her another beating if she didn't clear the spilled drink up quickly. This trigger is judged subjectively, and requires the fear of violence to be towards the defendant or another identified person. On the basis of the facts, Kevin could legitimately claim fear of serious violence against the identified person of Renee, as in ***R v Ward.*** Alternatively, it could be argued that the trigger was due to things said or done under s55 (4), although this is judged objectively and it would have to be established that Kevin himself would have had a justifiable sense of being seriously wrong on the basis of the comments made to Renee as a result of the cumulative impact of events (as established in ***R v Dawes***). This argument was perhaps less convincing and, as such it would be more appropriate to focus on fear of serious violence. There was scope to argue that Kevin could be reacting in a considered desire for revenge following recent events, however, this once again would not be a particularly strong argument.

- Finally, under s 54(1)(c), it must be proven that a person of Kevin's age (33) and sex (male) with the normal degree of tolerance and self-restraint and in his circumstances would have reacted in the same or similar way. This is sometimes referred to as the ultimate objective test. Kevin is expected to show normal levels of control and self-restraint, meaning that if he has lower levels of self-control as compared to the average person, he will still be compared to the reasonable person, unless these lower levels are normal for a person of his age and gender. As such, anything that would lower his capacity for tolerance or self-restraint will be disregarded, such as having a short temper. All of the circumstances of the defendant can be considered to consider how grave the trigger was. However, Kevin's response will be judged objectively against whether a person of D's age an sex in those circumstances may have lost control in response to what the victim did. It is arguable that a man of Kevin's age who has just witnessed the consistent abuse of his sister and saw her threatened again would have responded in the same way, meaning it is likely Kevin will be able to successfully plead the partial defence.

Murder

As loss of control is a partial defence to murder, some explanation of murder was necessary. In this regard, there were two approaches taken by learners; one was to spend a disproportionate amount of time discussing murder despite its straightforward nature on the basis of the facts or, alternatively, neglected a discussion of it altogether. Whilst it has been stated in previous Lead Examiners reports that murder does not need to be discussed in depth, it was not the intention that it was not to be discussed at all. Learners should be trained to strike a balance between these two approaches. Where there is a straightforward murder with no issues requiring and in-depth treatment, such as causation or *mens rea*, a mention of the *actus reus* and *mens rea* will

Candidate example

Kevin Gallo has been charged with the murder of Daniel Thomsen after beating him to death with a hammer. The definition of murder is the act of "unlawfully killing any reasonable creature under the Queen's peace with malice aforethought, express or implied" (Lord Coke 1997). Mr Gallo has reached the requirements of murder as the actus reus of murder is the "unlawfully killing" of a human, which he completed when he beat Daniel to death with a hammer. He also completed the mens rea, "with malice aforethought, expressed or implied, as he repeatedly hit Daniel on the head with the hammer shouting 'die' (R v Mohan). The jury would also need to examine whether it was Kevin's actions that led to Mr Thomsen's death through two tests of causation; legal and factual, in order to find him guilty of murder. The test of factual causation is the 'but for' test, established in the case of R v White (1910), which questions if 'but for' Mr Gallo's actions of beating Daniel over the head with a hammer would he have died? The answer is no, Daniel would have still been alive therefore the cause of his death is place on Mr Gallo. Legal causation is a test to see if anything was so significant it broke the chain of causation (R v Benge). As Mr Thomsen died instantly after he received the beatings from Kevin, legal causation is also placed on Mr Gallo due to there being no break in the chain of causation. As Kevin has reached all the requirements for murder he has been rightfully charged and can be convicted of murder.

Comment: here, the candidate has fully explained the *actus reus* and *mens rea* of murder. They have provided the Lord Coke definition, indicating that there must bean unlawful killing caused by the defendant and that there must be an intention to kill or cause grievous bodily harm. The learner has understood that causation is relevant to result crimes such as murder but has not wasted time by discussing intervening actions where they are not relevant.

still be necessary, but this can be dealt with swiftly. It should not be neglected all together as learners will be losing out on marks.

Loss of control

Most learners were able to identify that loss of control was the appropriate aspect of homicide, but the treatment of it was variable. The partial defence was explained well by many, with reference to appropriate supporting case law and statute law. However, there were many learners who referred to outdated case law such as ***R v Ahluwalia*** and ***R v Duffy***, which did not attract credit. ***R v Ahluwalia*** is often cited as supporting authority that the loss of control no longer needs to be sudden following the reform to the law under the Coroners and Justice Act 2009. This, however, is not the case. At best, ***R v Ahluwalia*** provides

Candidate example

Gregory. Also another thing to mention is that now because of the new law loss of control does not have to be sudden this is explained in the case of R v Ahluwalia, as she was prosecuted under the old law provocation and this stated that in order to use loss of control it had to be sudden. Also the old law allowed baby crying as a qualifying trigger this shows that the law has improved because it has acknowledged that Ahluwalia was suffering for a long time and it was bound for her to snap and also to get rid of abused qualifying triggers like baby crying. In Kevin's case we can see that

Commentary: even though this learner has referred to *R v Ahluwalia* as supporting authority for loss of control, it is clear that the learner understands that the reform of the law would have prevented Mrs Ahluwalia's conviction.

support for an evaluative commentary on the benefits of the removal of the requirement that there must be a sudden and temporary loss of self control, meaning that Mrs Ahluwalia would have been successful in her plea as opposed to having to resort to diminished responsibility.

Similarly, the introduction of loss of control under s54 Coroners and Justice Act 2009 overruled the precedent set in ***R v Duffy*** which emphasised the "suddenness" of the loss of self-control, meaning reference to this case would not attract credit as supporting authority. That is not to say that pre-2009 case law is obsolete. For example, ***R v Camplin*** does reflect the requirement in s54(1)(c) that the power of self-control expected of the defendant is that of a person of the defendant's age and sex. Similarly, ***R v Van Dongen*** supports the fact that the defence will fail if the reasonable man would not act in the same or similar way.

In discussing loss of control, few learners failed to recognise that Kevin's actions of running to the table and picking up the hammer would amount to a loss of control. The fact that it was sudden was noted as it appeared to be a sudden response to Daniel's comments, although many asserted that the requirement that it no longer needed to be sudden was relevant as it could be argued that he did not lose it suddenly, but that there had been a delay between the initial abuse of Renee and the attack by Kevin. Either way, learners were confident this was a loss of control.

Qualifying trigger

Where there was some distinction was in the treatment of the qualifying trigger. A proportion of learners understood that fear of serious violence would be the relevant trigger given the facts presented, although a number did state that this trigger could not be used by Kevin as he himself did not fear the violence and that only Renee would have been able to claim had she attacked Daniel. This was clearly an incorrect approach as the trigger under s55 (3) clearly states that the fear of violence can be directed towards the defendant himself or towards another identified person, in this instance Renee. Others were of the opinion that the relevant trigger would be things said or done, given that Daniel had actually stated that he would give Renee "another beating". This is an understandable conclusion as the things said are clearly of a grave character, however, there would be a requirement to discuss whether it would give **Kevin** a justifiable sense of being seriously wronged on an objective measure.

Candidate example

shown in the case of Dawes(2013). Gallo's loss of self-control looks to be attributable to his fear of serious violence from Daniel Thomsen (the victim) against Renee who is identifiable person as he id the defendant's sister. It's very similar to the case of Ward(2012) in the fact that Gallo feared serious violence against his sister and so reacted. The victim had a history of being violent towards the defendant's sister and made clear threats in front of the defendant. In addition, Gallo could be seen to have been seriously wronged as the victim was 'laughing about throwing Renee down the stairs' after he was forgiven and allowed back in the home. Section 55(5) explain that matters mentioned in subsections 3 and 4 can be combined

Commentary: this learner has provided a detail explanation and application of the qualifying trigger of fear of serious violence, clearly understanding why Kevin will be able to use the trigger. The discussion of the things said or done trigger was slightly weaker and was not necessary given the depth of treatment for the fear of violence trigger.

What should be noted is that many learners did refer to the triggers as the "fear trigger" or the "anger trigger". Whilst this is how they are commonly referred to, this does need expanding on, given that, for example the "anger trigger" is objective and requires there to a) be things said or done that are of an extremely grave character; and b) give the defendant a justifiable sense of being seriously wronged.

Person of D's age and sex

As regards the final aspect of loss of control, there was some excellent and detailed application of whether a person of Kevin's age and sex would have behaved in the same or similar way in the circumstances. Many did conclude that the reasonable person may have been more likely to have called the police as opposed to picking up a hammer and beating someone to death, which is a valid approach.

Evaluation and justification of decisions

In terms of reaching a justified conclusion, it was pleasing to note that Centres has prepared their learners well to draw together all of the elements of murder and loss of control and reach an overarching conclusion on liability.

Candidate example

In conclusion, Gallo's could be charged with manslaughter (by loss of self control) as he satisfies all elements of murder as wel as the requirements to use the partial defence of loss of self control. He had a loss of self control which was triggered by fear of violence against an identified person and a sense of being wronged, both qualifying triggers, and he acted as others matching his sex and age would have.

Commentary: this learner has provided a good, albeit briefly, as they have drawn together an earlier discussion of both murder and loss of control, stating that all elements are proven (which they were in the learner's discussion) and stated why loss of control is likely to be successful based on this.

As has been common in previous sessions, there was little evaluative commentary, although where this was present it was on the whole good, mainly focusing on the problems with the law relating to murder. This attracted some credit given that murder is a composite element of loss of control. There were some instances in which learners did attempt to provide evaluative commentary, however, there were times at it was generic in nature, simply stating "the law is outdated".

Evaluative points should be expanded upon to demonstrate why they are seen as issues with the law, as in the following example:

Candidate example

The evaluation of the common law on murder is that the language is very outdated, it uses archaic language such as 'reasonable creature' which has to be explained as people may not understand this, especially people like the jury. The Law Commission has already written a

Commentary: this learner stated that outdated language is a problem with the law, but expanded briefly including reference to "reasonable creature in being" as an example of this.

Helpful tips for future papers in relation to homicide

- **Refer to up-to-date law**: A significant proportion of learners lost marks due to referring to the old law of provocation. Provocation was abolished in October 2010 when the provisions of the Coroners and Justice Act 2009 relating to loss of control came into force and, as such, it was unusual to see so many centres refer to it. Whilst there are some similarities between the law of provocation, that law is no longer relevant, save for the fact that it too required a loss of control (but even that is altered byte Coroners and Justice Act removing the suddenness requirement). Centres should ensure that they are directing their learners towards the most up-to-date legal rules.

Candidate example

Voluntary manslaughter refers to all unlawful homicides that are not classed as murder. Manslaughter does not carry a compulsory life sentence. To be charged with voluntary manslaughter the defendant must have committed the actus reus and mens rea and there must be causal link between the defendants act and death. However, there are mitigating circumstances that the charge of murder is reduced to voluntary manslaughter. Loss of control which is defined by the Section 3 of the Homicide Act 1957 is a partial defence to voluntary manslaughter which was referred to as 'provocation'. It includes 2 tests: The subjective test which asks the question if, was the defendant provoked enough to lose self-control? And the objective test asks if would the reasonable person have been provoked enough to lose self-control and do as the defendant did? Loss of control must be sudden and temporary which was established in the case of R v Duffy. In DPP v Camplin the legal principle was that some characteristics of the accused can be attribute to the reasonable person. Other characteristics can relate to the de3fendants physical or physiological state, to the defendant's history or the circumstances of the provocation. In the case of R v Ahluwalia, the legal principle was that the provocation had to be sudden and temporary and di not allow for 'slow burn' cases where a person react5s, not to any act or incident, but acts in desperation after years of abuse. In Kevin's case he does apply for the subjective test as he was provoked enough to lose self-control as Daniel kept making comments to his sister Renee knowing that /Kevin told him to

Comment: in this example, the learner has exclusively referred to old test for provocation. Whilst some credit can be given for the fact that the defendant must have loss of control, the reference to the fact it must have been "sudden and temporary" is no longer good law. Similarly, the case law referred to is outdated and could not attract credit. Whilst the final stage of the test is objective, the full test is slightly different in the law under s54 Coroners and Justice Act and therefore was not creditworthy.

- **Voluntary manslaughter:** as identified earlier, there must be some reference to murder, establishing there has been a murder before going on to claim one of the partial defences.
- **Application:** a common theme from previous Lead Examiners Reports, it is essential that learners are discouraged from simply restating the facts of the scenario as this will be classed as narrative. Learners should be selective in their use of the facts of the scenario
- **Evaluation:** ensure that any evaluative commentary is expanded upon and are not just isolated points. The expansion does not have to be detailed but must be meaningful.

Police powers (AF3)

The police powers section of Activity 1 assesses the ability of learners to "think on their feet" and analyse the additional information relating to police powers that is presented to them in Part B. The key issue of police powers requiring discussion is not identified in Part A. Whilst Part A may refer to the fact that the defendant has been "arrested" this does not necessarily mean that arrest will be the component of police powers that will be discussed. As such, it is difficult to prepare for exactly which police power will appear. When confronted with alleged police wrongdoing in a specific area of their powers, learners are required to identify the power that has potentially been breached, explain how that power should legally exercised, apply this to the facts of the scenario and finally reach a conclusion on the lawfulness, or otherwise of the actions of the police.

In the current series, the relevant police power was stop and search. There were three key issues requiring discussion in this series:

1. The police stop and searched Kevin in his garden: the police are only permitted to stop and search an individual in a street or a public place. Kevin's garden would not count as a public place and they would therefore they have acted unlawfully in this regard.
2. The police told Kevin when they were searching him that it was in connection with a suspected murder: there were two possible interpretations to this a) they should have told Kevin they were searching him and for what BEFORE the search began, making it unlawful; or b) the fact they have told him the reason for the searchmeaning it is lawful.
3. Neither of the police officers told Kevin their names or the station they were from: this is unlawful as this is required under s2 Police and Criminal Evidence Act 1984 and Code A.

Learners did appear to struggle with this aspect of Activity 1 in this session, with few progressing beyond Band 3. Many did identify that stop and search was the relevant issue under discussion and were able to discuss the potential unlawful nature in relation to failing to disclose their names or station. Where there did appear to be problems was in relation to Kevin's search in his garden. There were learners who missed this point entirely, or who believed that it would be lawful if it was out of sight. There were others who did not discuss the issue of legality in relation to telling Kevin the reason for the search. Those who did deal with this issue well, either stated that it was unlawful as they did it whilst searching him, or that it was lawful due to the fact that the police are under a duty to inform suspects of the reason they are being searched. Quite often, there was imprecise reference to PACE, codes and section numbers

Unfortunately, there were many learners who confused the power of stop and search with that of arrest and discussed this in depth, despite the fact that there was no mention of arrest in the scenario. In addition to this, there was the return to issues witnessed in earlier series, where learners were including all potential police powers, instead of discussing only the most relevant to the scenario.

Candidate example

Kevin has stated that he has not been treated fairly when he was stopped and searched after the incident, first of all the two police officers have not stated their names and what police station that they come from, this is a breach of procedure on the polices behalf as this is the one of the first things that they should do, which is stated in The Police and Criminal Evidence Act 1984 (PACE), this act stated the strict rules on arrest, stop and search, detention and entry, so this would have been an unlawful arrest. Kevin has also stated that when they were searching him, they said that it was in connection with a suspected murder,

s60 of the PACE Act 1984, gives the police power to search people with good reason. In the case of Castorina v CC Surrey 1988, it brought out the 'necessity test' and questioned two things, did the officer suspect the person was guilty of an offence and was there a reasonable cause of suspicion. So, unless Kevin had been reported as the murderer, then I don't know how this would have been a reasonable stop and search. He has also said that when he returned home, the police officers approached him in his front garden and that was where he was searched, this is a lawful thing to do, the police are allowed to search someone in their own property if they have the right suspicion. As the police have not followed procedure, and they have not stated their name and what police station they are from, this makes it an unlawful stop and search as this is one of the first things they should have done, and because they have breached the rules this could result in a disciplinary for the officers, or even compensation of the defendant. 3C

Commentary: in this example, the learner has identified that the police are legally required to state their names and station and not to do so would be unlawful. The learner has, however, included an incorrect stop and search power (s60) and determined that the search in the garden is lawful.

Activity 2 (Offences Against Property and General Defences)

Criminal damage (AF1, AF2, AF4)

The Part A pre-release in relation to Activity 2 provides learners with the information that Mariam is being questioned in relation to setting fire to a house. The reference to "fire" was a clear indication that the offence would be arson. This was confirmed in the Part B material, with further information being provided:

- Mariam planned the arson on the house and also had the intention to commit basic criminal damage on the neighboring CCTV camera as evidenced by taking a can of spray paint with her for that purpose.
- Mariam knew that her boyfriend was away for the weekend, which precluded any intention or recklessness as to endangerment of life. This is because it could not be her aim, objective and purpose to endanger life by the criminal damage as she did not believe that nor would it appear that she realized therisk of life being endangered.
- Mariam poured petrol through an open window and threw a match in. As such, there is no indication that there was any entryto the building to justify a discussion of burglary,
- The fire has destroyed her boyfriend's garage and the gym equipment, which is clearly sufficient for the *actus reus* of destruction or damage of property belonging to another.

Learners performed better in Activity 2 as compared to Activity 1, having little trouble in identifying the criminal damage in relation to the CCTV camera and the arson of the garage and gym equipment. There was precise statement of the law under ss1(1) and 1(3) Criminal Damage Act 1971, with a range of appropriate supporting case law, such as ***Roe v Kingerlee*** and ***Hardman v CC of Avon.*** The *actus reus* elements for both the camera and the garage/gym were applied confidently and accurately by the majority of learners.

Whilst there was little trouble in discussing the *actus reus* of the offence, the *mens rea* appeared problematic. Quite often, learners neglected to refer to it at all, in either explanation or application or, alternatively, incorrectly stated that it was "without lawful excuse" without reference to intention or recklessness as to the destruction or damage of property.

A common issue was the tendency to discuss the offence of aggravated criminal damage, perhaps as a result of the reference to a house in the Part A pre-release and the Part B Set Task Information. Whilst it is understandable that learners anticipated this to be the case, the additional information within Part B makes it clear that Mariam could not have had the *mens rea* for this offence and thus the offence could not have been committed. An offence of criminal damage becomes aggravated through the additional requirement that the defendant was intentional or reckless as to the endangerment of someone's life as a result of the damage. There is no *actus* reus requirement to show that life actually was endangered. Discussions of aggravated criminal damage wasted time and, as a result, produced a rushed discussion of the defence aspect of the activity.

There were some learners who chose to discuss burglary, perhaps due to the intention to commit criminal damage being formed before arriving at the house and, potentially, simply due to the reference to a house. There was nothing to suggest that Mariam had entered the house and so this could not form the basis of an offence under either s9(1)(a) or 9(1)(b) Theft Act 1968, as both offences require some form of entry. Those who chose to assert that in committing criminal damage had committed an offence under s9(1)(b) were incorrect as criminal damage is not one of the ulterior offence required to be committed for the purposes of that offence.

Candidate example

Whilst D will likely be found guilty of arson as she had the actus reus and mens rea, she may also be charged for burglary. This is because in order to commit the arson she entered the victim's property, like in the case of **Ryan**. These are the first two elements of the actus reus of burglary. It must also be shown that she she tresspassed like in the case of **Collins**. I believe that she has tresspassed as there is no information to suggested she was allowed inside V's house as he was not home at the time and she climbed through an open window in order to get in, suggesting no evidence of being given a key which would of allowed to enter the property without tresspassing. THis therefore could likely satisfy the actus reus element of burglary. It is in my opinion that she has also satisfied section 9.1 (a) of burglary. This means to form intention before entering the property to either commit damage, GBH or to steal as it appears that she formed the intention of doing damage before she went inside as she went inside in order to get the gas to commit the damage. This likely give evidence of D also having the mens rea for burglary as well as the actus reus.

Commentary: in this situation the learner had referred to the offence of burglary. As is evident, they have not carefully read the facts of the scenario, stating that the defendant has entered the building, when the facts do not discuss this, Similarly, they have stated that there is a burglary based solely on the fact that the intention was formed earlier, which had she actually entered the building this may have been a valid argument.

Other learners demonstrated the approach from previous serious in which they discussed all potential property offences within the Unit 3 specification in the hope of potentially attracting marks. As with Activity 1, learners should be trained to spot the relevant offence at the Part A stage and prepare notes solely on that, as opposed to all potential property offences

Candidate example

In the Criminal Damage Act 1971, section 1(1) explains the basic offence of criminal damage. It says 'A person who without lawful excuse destroys or damages and property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence'.

Property is defined in Section 10(1) of the Criminal Damage Act 1971 as 'property of a tangible nature, whether real or personal'. The property in this case is Jack's garage which does constitute as property under this legislation. Also, the gym equipment would count as property too. The definition for property within criminal damage is wider than it is within theft.

Section 10(2) of the Criminal Damage Act 1971 gives us a definition of 'belonging to another'. It says 'property shall be treated for the purposes of this Act as belonging to any person – a)having the custody or control of it; b) having in it any proprietary right or interest or c) having charge of it. The facts do not state whether Johansson pays rent or partially lives at the house of her boyfriend so I assume that the house belongs completely to the boyfriend. So the property does belong to another as he has control of it, he has proprietary rights as he pays for it and he has a charge on it as he pays rent or mortgage. In addition, even if Jack borrowed the money to buy the gym equipment, it still belongs to him.

There are a plethora of cases that help us to define what counts as 'detroys or damages'. R Kingerlee(1986) explained that if expenses are incurred when try to get the property back t it's original state, it will count as damaged, even if the expenses could have been avoided a seen in Hardman v Chief Constable of Avon(1986). The damage to property does not have t be permanent as long as it affects its usefulness or value as seen in R v Fiak(2005) and Rope v Knott(1898). In Johansson's case, the property is described as destroyed. The destruction by the fire would have caused irreversible damage to the gym equipment meaning permanent damage and so the equipment would need to be completely replaced. In addition, the garage was damaged also and Jack would have to pay to restore it to its former. The damage caused by the fire Johansson set will mean I big expense to fix and replace.

In the case of basic criminal damage, there could be a lawful excuse. These are set out in Section 5(2) of the Criminal Damage Act 1971. This piece of legislation makes criminal damage allowed if the perpetrator believed they would have had permission from the owner of the property or if the damage was done in order to protect the property. I don't think either of these apply to this case and so Johansson did not have a lawful excuse under the Criminal Damage Act 1971.

The mens rea for the basic offence of criminal damage is 'intending to destroy or damage' which is having to goal to destroy or damage property or 'being reckless as to whether such property would be destroyed'. This is explained in R v G and another(2003). Johansson

clearly admitted that she meant to set fire to the house. Also any reasonable person would know and understand that setting fire to property would cause some damage. Johansson knew her boyfriend was away and that there was no one in the home which is why her charge would not be raised to aggravated criminal damage, explained in section 1(2) of the CDA 1971, as she did not endanger life.

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Section 1(3) of the Criminal Damage Act 1971 states that 'an offence committed under this section by destroying or damaging property by fire shall be charged as arson'. Johansson did use fire and so would be charged with arson as well as criminal damage

Commentary: this is an accurate and detailed explanation and application of the issue of basic criminal damage and arson. The learner has explained the meaning of destroy and damage with reference to a range of case law, such as R v Fiak and Roe v Kingerlee. The application was accurate, making full use of the facts of the scenario, for example stating that fire would cause irreversible damage, requiring the equipment to be completely replaced. The learner has referred to the issue of lawful excuse but determined it would not be relevant to the facts of the scenario. There is a clear understanding as to why aggravated criminal damage would not apply.

As with Activity 1, there was a common theme of learners restating the facts of the scenario without linking it to the law. There is no need for learners to restate the information as an introduction as it does not attract marks and does waste time.

Evaluation and justification of decisions

There are more learners attempting to reach justified conclusions in both activities, clearly drawing together all of their lines of reasoning to establish the liability of the defendant. This does not need to be excessive in nature and can be a summary of the issues discussed.

Candidate example

In conclusion, I believe that without a defence, Johansson would be charged with Criminal Damage under Section 1(1) of the Criminal Damage Act(1971) and Arson under Section 1(of the Criminal Damage Act(1971). This is because she, without lawful excuse, set fire to property that belonged to her boyfriend leading to severe damage to it. She actively intended to set the fire and cause this damage.

Commentary: this learner has clearly established why they believe that arson has been committed, providing a summary of the application of the law to the scenario

Evaluative commentary is usually less common in Activity 2 in each series. However, there were many candidates in this series who did identify key issues with the offence of criminal damage, mainly centeringaround the issue of the definition of "damage". The evaluative commentary was more thorough than the evaluation within Activity 1. Comments were made including that the definition of damage is vague, covering a wide range of material damage to property that some may not see as damage.

Helpful tips for future papers

- Learners should be encouraged to read the Set Task information more thoroughly and use their notes selectively in response. Where they may have prepared for the aggravated form of the offence, but there is no evidence of this on the facts, the learners should not discuss this, even though it is in their notes.
- The *actus reus* and *mens rea* of criminal damage should be emphasised, with learners being prevented from mistaking the lawful excuse element as the *mens rea* requirement – intention or recklessness is laid out in the sections of the Act of Parliament, so more attention should be drawn to this.

Defence (AF3)

Similar to Activity 1, the defence also represents the ability of learners to think on their feet as the defence is not alluded to in the pre-released material. The relevant general defence within this session was duress by threats. Learners are required to explain and apply the relevant defence and conclude on its success.

In relation to duress the following issues needed discussion:

- Threat of serious violence: the fact that Gabriel has texted Mariam saying he would give her a "severe beating" would amount to threats of serious violence, satisfying the first stage of ***R v Graham***
- Threat to commit a specific offence: she is told to commit the offence of arson, although it could be argued that she was not told to damage the camera.
- The threat must be effective at the moment the crime is committed: the fact that Mariam was texted on the Friday evening and committed the offence on the early hours of Saturday morning raises the issue of whether there was time for Mariam to escape and raise the alarm to the police
- Objective test: it is evident that a person of Mariam's age and sex sharing her characteristics would have responded in the same way

The treatment of the defence varied as it would appear that many learners were unprepared for this defence, perhaps expecting intoxication which is one that many would feel sits naturally with criminal damage. As such, it was common to see reference to all possible defences within the specification or, alternatively, they referred to self defence due to the threat made.

There were some learners who dealt with the issue of duress as an aspect of lawful excuse, stating that the threats she receive would have afforded her a lawful excuse.

Those who did identify duress realised it would be duress by threats and discussed its elements well, referring to appropriate case law such as ***R v Valderrama-Vega*** and ***R v Gill***. Many recognised that it could be argued she had time to escape, but believed that the fact it was a short space of time and was clearly operating on her mind at the time of committing the offence. Several argued that it would only absolve her of liability on relation to the arson and not the criminal damage.

There were, however, that confused the law of duress by threats with that of necessity and explained this, which is outside of the scope of the specification.

Candidate example

When questioned by police she gave the defence of duress of threats, arguing that a man named Gabriel threatened her to commit the arson, saying that if she didn't he would give her a severe beating. This threat was as a result of V supposedly borrowing money, which he refused to repay. As a result Gabriel was angry about V's refusal and so wanted to scare him into paying. Duress of threats is defined in **AG v Whelan** as a threat of immediate death or serious violence so great as to overbear ordinary powers of human resistance. For this defence to be applicable to D's case, it must first be proved that she was threatened into doing a specific crime as stated in **R v Cole**. This is evident as Gabriel has demanded D to set fire to Jack's gym equipment by sending her a text on the Friday evening. next it must be satisfied like in **R v Hudson and Taylor** that there was an immediate threat to D. This tends to be a problem when establishing the defence as no definition is given for 'immediate threat', something that could be reformed. However, i beleive that it can

be argued that there was an immediate threat to D. This threat must be to cause D death or serious harm, either to herself or someone that she cares for as stated in **R v Valderama-Vega**. As stated in the information provided, Gabriel has threatened to give her a severe beating if she did not comply. Finally, the threat must overbear normal powers of human resistance. This is decided using the **R v Graham** test which follows 3 steps. Firstly, did D have a reasonable belief that the beating would be carried out if she did not comply. I beleive that she did have a reasonable belief strong enough to scare her into committing the arson. Next did she have good cause to fear the threat? This element is harder to prove in D's favour as there is no evidence to suggest that Gabriel knew where she lived or had any information other than her phone number that could lead him to her whereabouts in order to give her the beating, however, there is a chance that this element could still be argued in her favour given that appropriate evidence was provided. Finally, would a sober person of reasonable firmness have acted in the same way? I think it is likely that a person of similar characteristics would have also been scared into carrying out the threat. 30

Commentary: in this example, there is a detailed explanation and application of the elements of the defence of duress. It should be noted that the learner did not attract credit for the beginning of the discussion, given that this was merely a restatement of the facts of the Set Task Information. There is a clear understanding of the potential for the time delay between the text and the commission of the offence to affect the defence's availability.

Summary

Based on the performance of learners during this series, Centres should consider the following when preparing for the next exam series

- Learners should be using up-to-date law. The defence of provocation is obsolete and it is not referred to within the Unit 3specification
- Where voluntary manslaughter is the relevant homicide offence, a brief but complete explanation of murder is still necessary
- Learners should practice identifying offences from Part A materials in past exam series to prepare them for the real
- assessment. This will ensure that they produce effective notes.
- Learners should be discouraged from included all potential offences or defences. Learners should receive practice in theform of mock exams to familiarize them with discussing only relevant issues
- Discourage learners from restating the Set Task Information in the introduction as it wastes time. The facts of the scenario should be used for the application of the law.

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